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Beginning of Construction for PTC and ITC in Lieu of PTC

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Agenda

- Background of PTC/ITC in Lieu of PTC
- Development of Begun Construction Requirement
 - Notices 2013-29, 2013-60, 2014-46, and 2015-25
- Current Issues in Transactions
- Future of Begun Construction
- Begun Construction Outside of PTC
- Questions

Background of PTC/ITC in Lieu of PTC

- Production Tax Credit (“PTC”) under IRC section 45 provides a production based tax credit currently adjusted to 2.3 cents/kWh (or 1.2 cents/kWh) for electricity sold to an unrelated party
- Investment Tax Credit (“ITC”) in lieu of PTC under section 48(a)(5) allows taxpayers to elect an ITC for certain qualified facilities under section 45(d) in the amount of 30% of the eligible basis

Development of Begun Construction

- American Taxpayer Relief Act of 2012 (“ATRA”) was enacted January 2, 2013
 - Changed eligibility for certain PTC and ITC in lieu of PTC technologies from a “Placed-in-Service” date requirement to a requirement that a facility must have “Begun Construction” before January 1, 2014
 - Based on American Recovery and Reinvestment Act (“ARRA”) section 1603 Grant Program language
- Taxpayer Increase Prevention Act (“TIPA”) was enacted December 19, 2014
 - Extended PTC and ITC in lieu of PTC for facilities that had Begun Construction before January 1, 2015

Notice 2013-29

- Issued April 15, 2013
 - Physical work of a significant nature
 - 5% safe-harbor
 - Look-through rule for work performed under a binding written contract
 - Aggregation rule
 - Continuous efforts / program of continuous construction
 - No successor in interest rule

Notice 2013-60

- Issued September 20, 2013
 - January 1, 2016 safe-harbor for continuous efforts and program of continuous construction
 - Master contract can be replaced by project contract for 5% safe-harbor
 - Successor in interest rule

Notice 2014-46

- Issued October 8, 2014
 - Clarification of physical work test
 - Clarification of transfers
 - 3% safe harbor

Notice 2015-25

- Issued March 11, 2015
 - Extended Begun Construction dates in prior guidance
 - Extended Deemed Continuous Safe Harbor for all projects through 2016, regardless of whether construction started in 2014 or prior
 - Did not address other concerns from the industry or future extensions

Application of Begun Construction Rules



Current Issues in Transactions

Physical Work

- Amount of work, modifications, inventory

Transfers

- Pairing tangible and intangibles

3% Safe Harbor

- Application of cost overrun

Continuous efforts/continuous construction

- How to measure for post-2016

Partially deemed continuous progress

- Government position

Future of Begun Construction

- Extenders bill passed by Senate Finance on July 21
 - Extends PTC/ITC in lieu of PTC for 2 years
 - Full Senate vote ahead
- House Ways & Means Committee
 - Focus on permanent extenders (R&D)
 - Hopes for earlier vote on extension
- Potential timing/outcome for extenders package
 - Phase-down and/or haircut
- Future Begun Construction guidance if extension

Begun Construction Outside of PTC

- Application of Begun Construction to ITC for solar
 - Senate Finance decided not to consider change in initial extenders bill
 - Growing support with safeguards
- North Carolina state renewable energy credit
 - 35% credit expires after 2015 unless sunset provision applies
 - 80% (or 50%) of costs must be incurred and physical construction completed prior to 2016



Questions?

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